IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2219 OF 2005

Allhabax Ysufmiya Shaikh .. Petitioner

Vs.

The Commissioner of Police
Brihanmumbai and ors. .. Respondents

Mr. R.L. Majgaonkar for the Petitioner.
Ms. A.S. Pai, APP for Respondents.

CORAM : B. H. MARLAPALLE &
SMT. R.S. DALVI,JJ.

Date : January 16, 2006.

ORAL JUDGMENT (Per B.H. Marlapalle,J.) :-

1. In this petition filed under Article 226 of the Constitution the petitioner has challenged the order dated 15/3/2005 passed by the Commissioner of Police, Brihan Mumbai under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short "the said Act") thereby taking him in detention under the said Act.

2. The detailed reasons were communicated by the Commissioner of Police, Brihan Mumbai to the petitioner on the very same day i.e. 15/3/2005 as required under Section 8 of the said Act. The petitioner was, at the relevant time, a resident of

Malwani, Malad (West), Mumbai and the Senior Inspector of Police at the Malwani Police Station submitted a proposal on 1/2/2005 for the detention of the petitioner under the said Act. The Commissioner of Police considered the said proposal along with the material in support thereof and on his subjective satisfaction he formed an opinion that the activities of the petitioner were prejudicial to the maintenance of public order and thus a slumlord under Section 2(f) of the said Act. Consequently, the impugned detention order was passed and was served on the petitioner along with its translation in the language known to him on 18/3/2005. The said order was approved by the Government of Maharashtra under Section 3(3) of the said Act on 21/3/2005. The Advisory Board had submitted its report on 29/4/2005. Consequently, the detention order was confirmed on 7/5/2005 by the State Government based on the said report submitted by the Advisory Board which recorded an opinion that there were circumstances in support of the petitioner's detention. By the impugned order, the petitioner also was granted liberty to file representation to the Competent Authority and/or the State Government. It appears that at the relevant time when the impugned order was served on the petitioner, he was released on bail in some other offence and to curb his further

indulgence in his activities as a slumlord, the impugned detention order was passed.

3. In Survey No.265 of Malwani area the land belongs to the Government of Maharashtra (Brihan Mumbai Suburban District Collector) and the petitioner along with others was reported to be engaged in causing encroachment on the said Government land. He was making small plots of about 10 x 15 ft. and disposing them off as plots for erecting hutments for amounts ranging from Rs.2,000/- onwards. It was also alleged that after the hutments were erected by the concerned occupants of the plot handed over by the petitioner, his demands for extortion from such occupants continued and refusal to comply with such demands would result into unleashing terror in the entire area of Ambojwadi where the said land is located. The detention order is based on five incidents in LAC No.4199/2004, C.R. No.243/2004 and three incamera statements of witnesses A to C and all these witnesses confirmed in their recorded statements that they were the beneficiaries of the plots given to them by the petitioner by receiving Rs.3000/- upwards from each one of them.

4. In addition to the reasoning set out in

detail in the accompaniment to the impugned order, the Commissioner of Police, Brihan Mumbai has filed an affidavit in reply and the Under Secretary from the Home Department (Special), Government of Maharashtra has filed another affidavit setting out the dates of events so as to show that the impugned order does not suffer from any procedural infringements under the said Act. On the issue of encroachment on the Government land, the order refers to the report submitted by Mr. Jadish Chougule, a Governemnt employee to the Collectorate and it is stated that there was a demolition drive carried out in Abojwadi area in the year 2001 and all the illegal structures were demolished. Even thereafter encroachment and erection of illegal huts was rampant in the said area and second operation of demolition was carried out on 23/12/2004 and 24/12/2004. In the said report he set out the names of the persons who were behind this illegal encroachment and construction of huts in the Abojwadi locality in Survey No.265. The petitioner was one of such persons responsible for the illegal encroachment and disposal of the Government land and, therefore, Mr. Chougule had filed a complaint with the Malwani Police Station for an offence under Section 9B of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 on 27/12/2004

and the same came to be registered as LAC No.4199 of 2004. On registering the complaint, the police had visited the said area and after questioning the citizens in that area had drawn panchanama. During the course of investigation, the police had recorded the statements of Ravindra Balkrishna Devre, Anwar Ali Akhtar Ali Qureshi, Smt. Asha Jivan Pawar, Sarfuddin Aminuddin Shaikh, Mohamed Salim Ansari, Smt.Sayarabi Moulabax Shaikh, Anwar Shahid Ansari, Banwarilal Vishram Varma, Smt. Zubeda Kausar Khan etc. Anwar Ali had stated that he had purchased a plot admeasuring 12 x 20 ft. from Himachal Barma for Rs.27,000/- in the year 2001 and constructed his house by purchasing bamboo and gunny cloth. The hut was demolished in December, 2004 along with other huts on the Government land and he specifically stated that he had purchased the plot from Himachal Barma through the petitioner. So was the statement of Smt. Asha Jivan Pawar in respect of the plot admeasuring 12 x 20 ft. from Khalidbhai Wakharwala for Rs.7000/- in the year 1996. Shri Sarfuddin Aminuddin Shaikh, a resident of Ambojwadi hutment area stated that the petitioner and his associates, namely, Khurshidbhai Wakharwala, Umarbhai, Naimulla Wakharwala, Londhe Mama, Himachal Barma and Sikandar Lightwala were responsible for the encroachment on the Government land at Amhojwadi near

Akashwani, Malwani as they were selling small pieces of the said land to needy people by creating illegal tenancies. The witness further stated that if anybody complains against the petitioner and his associates, the complainants would be threatened of dire consequences by the petitioner and his associates who were moving with arms. The statements of other witnesses also confirmed the activities of the petitioner and his associates of allotting plots admeasuring 12 x 20 ft. for construction of huts in Survey No.265. It also revealed during the investigation that anybody who complained against the petitioner or his associates would be assaulted and, therefore, there was no impediment in erecting such huts even after the demolition drive was carried out. The petitioner was arrested on 12/1/2005 and the papers submitted before the Police Commissioner indicate that he had admitted his guilt, namely, encroachment on the Government land. His associates Haribhau Kashinath Londhe, Mohd. Khalid Abdul Razak Ansari, Himachal Barma, Dawood Bhakar Hussain Maniyar and Bharat Bavkar were also arrested but were subsequently released on bail.

. C.R. No.243 of 2004 for offences under Sections 143, 145, 147, 149, 336, 353, 341, 427 of

I.P.C. was registered against the petitioner and others at the Malwani Police Station on 25/12/2004. Panchanama of the place of offence was drawn by the police on the same day and during the course of investigation statements of three persons were recorded, namely, Shri Shivaji Mhasaji More, Shri Dilip Mahadeo Karne and Shri Sanjay Gunaji Sawant.

5. Confidential enquiries were carried out regarding the activities of the petitioner as a slumlord in the Abojwadi area near Akashwani, Malwani by recording incamera statements. Three statements were recorded on 3/1/2005, 5/1/2005 and 8/1/2005. The first witness stated that he had purchased a plot admeasuring 10 x 15 ft. from the petitioner's associate by name Dawood Maniyar for an amount of Rs.20,000/- and was also giving rent of Rs.200/- per month to the said associate. When the witness asked for the papers in support of the title he was informed that they would be handed over after the registration with the Collectorate was completed. When the witness realised that it was an illegal deal, he was threatened sometimes in the first week of December, 2004 by saying in Hindi, "*Madorchod Jagah Ka Kagad Mangta Hai Kya?*". Similar was the experience of encounters with the petitioner that came out through

the statements of witness B and witness C. Based on all this material, the Police Commissioner came to the conclusion that the activities undertaken by the petitioner were that of a slumlord as defined under Section 2(f) of the said Act and the said activities were prejudicial to the maintenance of public order. There were also material before the Police Commissioner to show that if the demands of extortion made by the petitioner were not fulfilled, he with the help of his associates would unleash terror in the Abojwadi area and the gang was moving with weapons and at times deadly weapons. The Advisory Board for recording its opinion has also considered the entire material placed before it, the petitioner was heard and the Board recorded an opinion that the detention of the petitioner was justified. No procedural infirmities have been pointed out by the learned counsel for the petitioner in his arguments before us so as to vitiate the impugned order of detention. The sequence of events set out in the affidavit of the Under Secretary show that all the subsequent steps, after the detention order was passed, have been taken in time. There is no material placed before us to show that the petitioner’s rights under Article 21 or 22 of the Constitution were violated while passing the impugned order or confirming the same and/or while

deciding his representation.

6. The learned counsel for the petitioner has relied upon a Division Bench decision of this Court in the case of Vithal Moreshwar Khandagale vs. J.F. Riberio and anr. reported in **1982 Cri.L.J. 1288**. He also stated that the correspondence on record indicated that the petitioner was a social worker and not a slumlord. The decision in Khandagale's case (Supra) is based on the facts of the case of bootlegger. In the instant case, as noted earlier, there was sufficient material before the Police Commissioner to hold that the petitioner was a slumlord and his detention was necessary to avoid further activities of illegal encroachment on Government land by erecting huts on the same land and extorting money from such occupants. The letters purportedly addressed by the petitioner and which have been annexed to the petition do not support his claim that he was a social worker. In fact, some of these letters go to show that he acted as if he was the owner of the locality and was wanting to undertake the renovation of the entire encroached area.

7. In the premises, the challenge to the impugned order of detention is devoid of merits and, therefore,

the petition must fail. Hence the petition is hereby dismissed and rule is discharged.

(Smt.R.S. Dalvi,J.) **(B.H. Marlapalle, J.)**